

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 1999-278-E - ORDER NO. 1999-483

JULY 7, 1999

IN RE: Application of Duke Energy Corporation for ) ORDER / DR  
Authorization under Article 13, Chapter 27 of ) APPROVING  
Title 58 of the Code of Laws of South ) APPLICATION  
Carolina to Issue and Sell Securities )  
(Common Stock). )

On June 23, 1999, Duke Energy Corporation (Company) filed an application (Application) for authorization to issue and sell Common Stock, in the manner described in the Application. Based on the verified Application and the Commission's entire files and records in this matter, the Commission now makes the following:

**FINDINGS OF FACT**

1. The Company is a corporation duly organized and existing under the laws of the State of North Carolina. It is duly authorized by its Articles of Incorporation, as amended, to engage in the business of generating, transmitting, distributing and selling electric power and energy, and in the business of operating water supply systems. It is duly domesticated in the State of South Carolina and is authorized to conduct and carry on business in that State, and is conducting and carrying on the businesses above mentioned in each of said States. It is a public utility under the laws of this State and in its operations in this State are subject to the jurisdiction of this Commission. It is also a public utility under the laws of the State of North Carolina and in its operations in that

State are subject to the jurisdiction of the North Carolina Utilities Commission. It is a public utility under the Federal Power Act, and certain of its operations are subject to the jurisdiction of the Federal Energy Regulatory Commission. In addition, the Company, through its subsidiaries and affiliates, engages in a broad range of energy-related businesses throughout the United States and the world.

2. The Company proposes, pursuant to its application in this Docket, to issue and sell from time to time a maximum of 10,000,000 shares of its Common Stock, in addition to approximately 2,000,180 shares authorized for issuance in Docket No. 98-057-E, Order No. 98-148, but not yet issued (the “Proposed Securities”). The Company intends to issue and sell the Proposed Securities pursuant to its amended dividend reinvestment and stock purchase plan, the Duke Energy Corporation InvestorDirect Choice Plan (the “Plan”). The offering of the Proposed Securities through the Plan will be registered with the Securities and Exchange Commission in a Registration Statement on Form S-3. Proceeds from sales of the Proposed Securities will be used for (a) making equity investments in certain of the Company’s subsidiaries and affiliates in order to balance their respective capital structures and support their separate energy-related operations, and to balance the Company’s own consolidated capital structure, (b) financing the Company’s ongoing construction (including the acquisition of nuclear fuel), or (c) general corporate purposes. In each case, such proceeds may be used for the repayment of short-term debt incurred for such purposes.

The Plan is a dividend reinvestment and stock purchase plan permitting automatic reinvestment of cash dividends paid upon Common Stock and the Company’s Preferred

Stocks. The Plan also allows Plan participants to make optional investments in Common Stock up to a maximum of \$100,000 per month, and may from time to time allow optional investments exceeding that maximum based upon waivers granted by Company under circumstances described below.

The Plan provides shareholders and others with a convenient way to purchase shares of Common Stock without payment of brokerage commissions or service charges. Further, recent amendments to the Plan provide the Company with a low-cost method of raising capital through optional cash investments in the Common Stock by large investors who are granted waivers by the Company of the maximum monthly optional investment limit. This feature includes a discounted pricing mechanism for such optional investments and is fully described in the draft Plan prospectus (filed as Exhibit A to the Application) under the section entitled “Optional Investments – Optional Investments Over Maximum Monthly Amount.” The Plan is more fully described in the draft prospectus, and the description of the Plan in the Application is qualified in all respects by reference to the description in the draft prospectus.

In the Application, the Company explains that in addition to the needs of its ongoing construction program, the Company’s other energy-related operations, which are carried on by its subsidiaries and affiliates, require increasing amounts of capital. In order to maintain a proper balance in the Company’s own capital structure and, by making equity investments in its subsidiaries and affiliates, enable them to maintain a proper balance in their respective capital structures, the Company needs to issue additional Common Stock from time to time. The Company states that if it is to continue

to be a leader in the quickly changing energy industry it is essential that the Company maintain the financial strength and flexibility to take advantage of favorable opportunities for growing and expanding its energy business as those opportunities arise. The Company further states that the provision of the best possible retail electric service remains a central part of its mission, and that mission will be accomplished more effectively if the Company continues to be a leader in the energy industry as a whole.

The shares to which the Application relates consist of 10,000,000 shares newly reserved for issuance under the Plan, along with shares not yet issued under the Plan from the 3,600,000 shares authorized for issuance under the Plan, as in effect in February, 1998, in Docket No. 98-057-E, Order No. 98-148. As of the date of the Application, 2,000,180 shares authorized in such docket remain unissued. The Company requests that the authority in such docket with respect to such unissued shares remain in effect, and be amended to include authorization to issue such shares under the Plan as described in the Application. As contemplated by the Commission's order in Docket No. 1999-011-E, each share of Common Stock outstanding, including the Common Stock to be issued pursuant to the Commission's authority in this docket, includes a Preference Stock Purchase Right under the Company's Rights Agreement.

### **CONCLUSIONS**

Upon review and study of the verified Application, its supporting data and other information in the Commission's files, the Commission is of the opinion, and so finds, that the Company is a public utility subject to the jurisdiction of this Commission with

respect to its rates, service, and securities issues and that the issuance and sale of the Proposed Securities, as set forth in the Company's Application, are

- a) For lawful objects within the corporate purposes of the Company;
- b) Compatible with the public interest;
- c) Necessary and appropriate for and consistent with the proper performance by the Company of its service to the public and will not impair its ability to perform that service; and
- d) Reasonably necessary and appropriate for such purposes.

IT IS, THEREFORE, ORDERED that Duke Energy Corporation be, and it is hereby, authorized, empowered, and permitted, upon the terms and conditions set forth in its Application:

1. To issue and sell from time to time, pursuant to the Plan as described in the Application, a maximum of 10,000,000 shares of its Common Stock along with a maximum of 2,000,180 shares of Common Stock authorized but not yet issued pursuant to the Commission's order in Docket No. 98-057-E, Order No. 98-148; and

2. To use the net proceeds of such sales to invest in its subsidiaries and affiliates in order to balance their respective capital structures and support their energy-related operations, to finance its ongoing construction (including the acquisition of nuclear fuel), and general corporate purposes, including the repayment of short-term debt obligations incurred for those purposes.

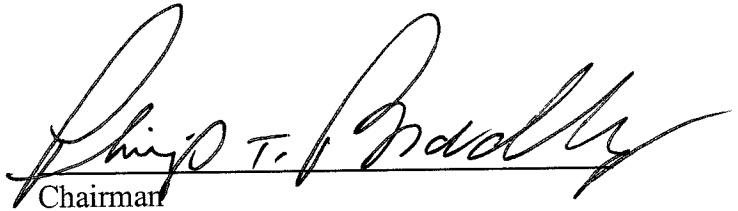
IT IS FURTHER ORDERED that:

1. Approval of this Application does not bind the Commission as to the ratemaking treatment of the transactions contemplated hereunder.

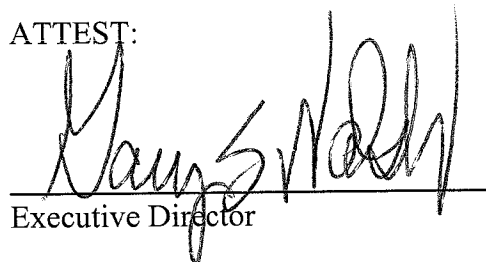
2. This Order shall not, in any way, affect or limit the right, duty or jurisdiction of the Commission to further investigate and order revisions, modifications, or changes with respect to any provision of the Order in accordance with the law.

3. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

  
Chairman

ATTEST:

  
Executive Director

(SEAL)